

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION FIFTEEN

New Orleans, LA

ENTERGY OPERATIONS, INC.
Employer

and

Case No. 15-RC-8606

INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS, LOCAL UNION
2286, AFL-CIO
Petitioner

DECISION AND ORDER

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, (“Act”), a hearing was held December 13 and 14, 2005, before a hearing officer of the National Labor Relations Board, (“Board”), to determine an appropriate unit for collective bargaining.¹

I. BACKGROUND AND ISSUES

On April 11, 2005, the International Brotherhood of Electrical Workers, Local Union 2286, AFL-CIO (“Petitioner”) filed a representation petition seeking to represent all purchasing agents and material coordinators, employed by Entergy Operations, Inc. (“Employer”) at its River Bend Nuclear Station (“River Bend”) in St. Francisville, Louisiana. On April 20, 2005, the Employer and Petitioner signed a Stipulated Election Agreement for an election in a unit which included the classifications of procurement specialists and “coordinators, materials project” (“coordinators”). Subsequently, the Employer sought to withdraw from the Stipulated Election Agreement, contending that all the employees in the petitioned-for bargaining unit were managerial employees. On April 27, the Regional Director withdrew his approval of the

¹ Upon the entire record in this proceeding, the undersigned finds:

a. The hearing officer's rulings made at the hearing are free from error and are hereby affirmed.

b. The parties stipulate and I find that the Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.

c. The parties stipulate and I find that the Petitioner is a labor organization within the meaning of the Act and claims to represent certain employees of the Employer.

d. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

Stipulated Election Agreement and issued a Notice of Hearing. However, later that same date, the Regional Director revoked the Notice of Hearing and reinstated the Stipulated Election Agreement. The election was conducted on May 18, 2005 with a tally of six votes for and one against the Petitioner, with no challenged ballots. The Employer filed three objections, one of which alleged that the Regional Director erred in reinstating the Stipulated Election Agreement. The Regional Director overruled the objections. However, the Board, by decision dated August 26, 2005, set aside the election and remanded the case to the Regional Director for further appropriate action. Because the parties were unable to reach another Stipulated Election Agreement, the Regional Director set the case for a hearing to start on December 13, 2005.

At the hearing, the Petitioner amended its petition to reflect that the unit it was seeking to represent included the classifications of procurement specialists, senior procurement specialists (“buyer(s)”) and coordinators. Because no employees were employed as procurement specialist at the time of the hearing, the Employer objected to the amendment. The Petitioner acknowledged that there are no employees currently employed in this classification; however, Petitioner asserts that the amendment is proper because the undisputed evidence established that in prior years procurement specialists have been employed at River Bend. At the time of the hearing, there were five buyers and three coordinators employed at River Bend.² The Employer contends that all the employees in the petitioned-for unit are managerial employees and are, therefore, exempted from the protections of the Act.

II. DECISION

Based upon the evidence produced at the hearing, I find that the Employer does not employ at River Bend any employees classified simply as procurement specialists. I also find that the buyers and coordinators are managerial employees based on their exercise of discretion in making purchases, lending, and selling the Employer’s property. Accordingly, I am dismissing the petition.

III. STATEMENT OF FACTS

A. Overview

The Employer operates four nuclear power plants in the Southern United States. They are Waterford 3 and River Bend, both in the Louisiana; Grand Gulf Nuclear Station in Mississippi; and Arkansas Nuclear Station in Arkansas. These plants are regulated by the Nuclear Regulatory Commission.

All of the employees covered by the petitioned-for unit work in the Materials, Purchasing and Contracts (MP&C) Department at River Bend. Tracey Stubbs is the MP&C Director. Stubbs works at the Employer’s headquarters in Jackson, Mississippi. Stubbs is responsible for strategic direction and oversight of the MP&C activities at River Bend and the other three nuclear power plants in the South. Robert E. Hebert is the Manager of the River Bend MP&C Department. Hebert reports directly to Stubbs. Two of the coordinators, O.C. Britt and Charlotte Odom, report directly to Hebert. Judy Patin is classified as the Procurement

² The Employer employs Alonzo M. Allen, III, Dennis R. Harrison, Douglas D. McKowen, Thomas W. Schindler, Jr., and Nancy M. Spillman as buyers and Glenn P. Bello, O.C. Britt and Charlotte Odom as coordinators.

Supervisor and she directly supervises the five buyers and a coordinator named Glenn P. Bello (hereinafter Bello will also be referred to as a buyer). Patin reports directly to Hebert. T. B. Osterberger is classified as the Materials Supervisor and also reports directly to Hebert.

The Employer measures an employee's responsibility based upon a numerical system, where the greater the "Responsibility Level" ("RL") the higher the number. For example, Stubbs, is a RL 25, Hebert is a RL 23, and Patin and Osterberger are RL 21s. All of the employees in the petitioned-for unit are all RL 19s. Stubbs testified that the RL 19 level is also held by: the financial analysts that works in business management, senior engineers that work in engineering, the human resource staff members that work in the human resources department, accountants, attorneys, and some first-line craft supervisors are all RL 19s. Patin testified that the buyers and coordinators are all eligible for the management incentive plan which allows them to earn up to an additional fourteen percent of their base salary.

B. Job Duties of the Six Buyers Supervised by Patin

The buyers supervised by Patin are responsible for purchasing material needs for River Bend. However, they do not purchase nuclear fuel and do not process radioactive waste. Purchases are initiated when a department within River Bend makes an electronic material request on the Employer's computer system known as "Passport".³ The material request includes a brief description of the item, quantity needed, date item needed, quality level required (safety related or non-safety related), and which department initiated the material request. Once the material request is entered into Passport, Passport electronically views the Employer's inventory to see if it has the item in stock. If the item is not in stock, the material request is electronically forwarded to the MP&C Department for acquisition. Upon receipt of the material request, the buyers self-assign the material request amongst themselves within their area(s) of expertise.⁴

After a buyer is assigned the material request, the buyer performs a check to see if the requested item is in inventory. If it is not an inventory item, the buyer conducts a review of the item to see if it can be replaced, repaired, or assembled with other parts already in inventory. If it can be replaced, repaired, and/or assembled with other parts in inventory, the buyer contacts the initiator of the material request and informs him of the alternate means to fill the request. Upon gaining concurrence with the material request initiator to replace, repair and/or assemble the item with other parts in inventory, the buyer cancels the original material request and a new material request is submitted requesting the items needed to repair, replace and/or assemble the item. The buyer has the authority to advise the material request initiator of the inventory items that may be used to replace, repair or assemble the request, cancel the original material request, and direct the initiator to submit a new material request without advising and/or consulting Patin.

If the buyer determines that the material request will require a purchase, the buyer checks to see if the item is in stock at one of the Employer's other nuclear plants. When the item is in

³ Passport is the Employer's computer system used for planning, procurement of material, warehousing, and inventory control. Passport is used by all four of the Employer's nuclear plants in the South.

⁴ Combined, the five senior procurement specialists have over 100 years of experience in purchasing and through the years have developed expertise in certain areas, i.e. electrical, mechanical, and instrument and control. Bello has been working in procurement for approximately two years.

stock, the buyer initiates the transfer between the facilities. If it is not in stock, the buyer checks to see if the item can be purchased with a credit card. When it can be purchased with a credit card, the buyer instructs the material request initiator to buy the item with the credit card and provide the buyer with an expense report. The buyer has the authority to instruct the request initiator to buy the item with a credit card without seeking approval and/or consulting Patin.

If the material request can not be fulfilled by one of the means above, the next step is to check to see if the material request can be filled using the Vendor Stocking Program which is managed by Coordinator O.C. Britt. Britt's duties and responsibilities are discussed below.

If it is determined that none of the above methods can be used to fulfill the material request, the next step is to convert the material request to a requisition. A requisition is formatted by gathering all the technical information required for a particular item. To do this, the buyer may contact the material request initiator and ask him questions about the item. The buyer may also contact procurement engineering and ask them about the particular specifications required for the item. Once this is completed, the requisition is converted to a purchase order. The purchase order is the contract with the vendor. One purchase order may have multiple requisition line orders on it as long as the purchase order is going to the same vendor. It costs the Employer approximately \$600 to process one purchase order.

Each buyer has the independent authority to spend up to \$10,000 on any single requisition item. All the buyers except for Bello have the authority to execute purchase orders for amounts up to \$250,000 without Patin's permission. Bello's purchase orders must be approved by one of the other five buyers. Patin testified that the average requisition item is for about \$5200 and that 94% of the material items purchased for River Bend are under \$10,000. For calendar year 2005 up until the date of the hearing, the buyers purchased approximately \$12.5 million worth of materials.

In regards to each requisition item \$10,000 and under, the buyers have complete discretion to select the vendor, except for sole source and safety related items. Sole source items are items that are normally patented and contain proprietary information; thus, the Employer is only able to obtain the item from one vendor.⁵ In regards to safety related items, the items must be purchased from vendors who are on the Qualified Supplier List ("QSL") maintained by the Employer. There may be more than one vendor on the QSL who is an authorized vendor for a particular item. When there is more than one authorized vendor, the buyer has sole discretion in selecting the vendor when the requisition item is \$10,000 and under. The buyer may also initiate the process to have a vendor added to the QSL in order to purchase a safety related item from the vendor.

Although all the buyers have the discretion to select from multiple vendors for safety and non-safety related items for purchases of \$10,000 and less without bidding, Patin testified that when the item is under \$10,000 she expects the buyers to seek competitive bids for the items and negotiate the price of the items with the vendors.⁶ When the purchase price exceeds \$10,000, and is not a sole source item, the buyers are required to seek Requests from Quotes ("RFQ") from at least three vendors per item bid. Except for safety related and sole source items, the buyer has complete authority in determining which three vendors will receive the RFQ. As

⁵ The record is silent as to how often sole source purchases are completed.

⁶ Patin testified that the buyers regularly bid items that are priced under the \$10,000 threshold.

noted above, the vendors for safety related items must be selected from the QSL and sole source items are purchased from a required vendor. The buyers are responsible for evaluating the bids, including looking at price, schedule dates, shipping, and whether the vendor will meet all technical and quality requirements listed in the RFQ. Lowest price is not always determinative of which vendor gets the bid. For example, the lowest price vendor may not be awarded the bid if the buyer determines through evaluating the bid that the vendor can not deliver the item to the Employer within the due date established by the RFQ.

After evaluating the bids, the buyer selects the winning bid. The buyer does not have to consult with Patin while evaluating the bids or in selecting the winning bid. Once the winning bid is selected, the buyer submits the bid price for approval to the department that made the material request.⁷ After the department acknowledges that it has the funding to purchase the item, the buyer executes the purchase.

C. Job Duties of Coordinator O.C. Britt

As previously noted, Britt is the contract manager for River Bend's Vendor Stocking Program. Through this program, River Bend maintains an inventory of between 1,450 and 1,500 items commonly used at the plant. River Bend has a contract with Rexell Southern to supply the items to River Bend. Britt oversees the contract with Rexell Southern. Britt is responsible for assuring that when a quantity of a material item in inventory nears the minimum level that new items are purchased to bring the quantity back to its maximum level. Britt also checks the received items from Rexell Southern to insure they match the ordered items. Based on Britt's assessment of the activity and demand needs of River Bend, Britt adjusts the established minimum and maximum levels of inventory items. There is no evidence that Britt's adjustment of the minimum and maximum levels are reviewed.

River Bend's business service office pays all invoices related to the Vendor Stocking Program. Britt approves all the invoices prior to payment. Britt has a corporate procurement card which allows him to authorize payment of invoices up to \$12,500 on any single transaction and up to \$100,000 per month. As such, Britt is authorized to spend up to \$1.2 million of River Bend's funds per year based upon his assessment of what should be the minimum and maximum inventory levels. Britt is also responsible for disposing of River Bend's obsolete inventory.

Britt participated on the team that established the procedures associated with the use of the Passport system. He has trained the River Bend employees and employees at the other three nuclear power plants in the South on how to properly use Passport.

The employees in the MP&C Department have every other Friday off from work. Britt works the opposite Friday from T. B. Osterberger. As previously noted, Osterberger's job title is Materials Supervisor and he reports directly to Hebert. When Osterberger is off, Britt assumes his responsibilities and duties.

When the plant declares a state of emergency based on some event, the facility is placed in an emergency status, an emergency plan is initiated, and the plant becomes an Emergency

⁷ The buyer submits the winning bid to the department for approval only for purchases over \$10,000. The department's role at this point is to check to see if it has the funds to purchase the item prior to the buyer awarding the bid.

Operations Facility “EOF”. Under the EOF procedures, either Hebert, Patin, Osterberger or Britt will serve as the Administrative Logistics Advisor (“ALA”) for the facility.⁸ The ALA, among other duties, is responsible for assuring that all emergency staffing personnel are present for work, developing long-term staffing rotation, and coordinating assistance for equipment, food, supplies, and lodging for the employees at the EOF.

D. Job Duties of Coordinator Charlotte Odom

As previously noted, Odom is one of the two coordinators who report directly to Hebert. Odom serves as the point of contact with other utility companies when they desire to borrow or purchase material items from River Bend. When a utility company contacts Odom to borrow and/or purchase an item, she evaluates the application for the requested item, River Bend’s need for the item, the price, and the number of the item River Bend has in inventory. Odom will normally confer with a buyer when evaluating the release of the item. If she determines that the item can be loaned, she negotiates the lending terms. If she determines that the item can be sold, Odom negotiates the purchase price with the other utility. The payment may be in monetary terms or payment in kind. For example, about two weeks prior to the start of the hearing, a utility company needed an item because the item it had ordered from a vendor had not arrived. Odom negotiated with the utility company to give it the item out of River Bend’s inventory and as payment River Bend would receive the item that the utility company purchased from the vendor. There is no evidence that the lending and/or selling terms Odom reaches with utility companies are reviewed.

River Bend’s scheduling and planning meetings occur three days per week. Odom attends the meetings as Hebert’s representative. At these meetings, the different department representatives discuss the current work and plans for work for the next twelve weeks. Odom takes this information and prepares a report to give to the buyers so that they may plan their future purchases. This report consists of a job description, the scheduled date of the job, the catalog identifier, when the item is needed, and the stock code number.

As in the case of Britt, Odom also has responsibilities if and when the EOF is activated. If a state of emergency is declared, Odom would become the Director of the Joint Information Center (“JIC”). The JIC is a facility that is located outside the danger area and is where all the information regarding River Bend is gathered to provide information to the public and news media. In this position, Odom’s responsibilities include approving all releases to the media and controlling rumors and misinformation about River Bend. As the Director of JIC, Odom will report directly to the “Recover Manager”. The Recovery Manager is the highest position of authority on the EOF organizational chart.

IV. DISCUSSION

Managerial employees are excluded from the coverage of the Act and are not entitled to bargaining rights. *NLRB v. Bell Aerospace Co.*, 416 U.S. 267, 289 (1974). Managerial employees are defined as those who formulate and effectuate management policies by expressing and making operative the decisions of their employer. To be considered managerial, an

⁸ The four individuals are on a four-week on-call schedule. As such, each individual is on-call twelve weeks a year. If an EOF is called during the individual’s on-call period, he or she is required to serve as the ALA.

individual must exercise discretion within, or even independently of, established employer policy and be aligned with management. *NLRB v. Yeshiva University*, 444 U.S. 672, 682-683 (1980). The determination of an employee's managerial status depends on the extent of his or her discretion, and an employee who exercises limited discretion, bordering on routine performance, will not be deemed managerial. *Eastern Camera & Photo Corp.*, 140 NLRB 569, 571 (1963).

The Board has traditionally viewed as managerial individuals who exercise discretion in making purchases on behalf of their employer. *ITT Grinnell*, 253 NLRB 584 (1980) (Although the Accounts Receivable Collection Coordinator did not unilaterally extend credit to Employer's customers, he had discretion in granting concessions to customers regarding how much they owed. As such, he was a managerial employee.); *Simplex Industries, Inc.*, 243 NLRB 111, 113 (1979); *Albuquerque Div., AFC Industries, Inc.*, 145 NLRB 403, 414-415 (1963). The ability to commit an employer's credit in substantial amounts, especially when accomplished through the exercise of discretion that is not ordinarily reviewed, is strong evidence of managerial status. *Concepts & Designs, Inc.*, 318 NLRB 948, 956-957 (1995), *enfd.* 101 F.3d 1243 (8th Cir. 1996) (buyer found to be managerial employee because she had independent authority in selecting vendors, negotiating purchase price, evaluating quality of parts, and spent approximately \$2 million in purchases for one year.) Employees who make purchases on behalf of their employers will not be deemed managerial, however, where their discretion is restricted significantly by the employer's guidelines or the need to clear their decisions with higher authorities. *The Washington Post Company*, 254 NLRB 168, 189 (1981); *Bell Aerospace, A Division of Textron, Inc.*, 219 NLRB 384 (1975).

A. Buyers

The buyers have the authority to make purchases for the Employer. For non-safety related purchases of \$10,000 or less, they have the discretion to select the vendor they want and negotiate the purchase price, quality and delivery requirements with the vendor. If the item cost more than \$10,000, they select the vendors who will provide the bids, evaluate the bids based on price, quality, shipping requirements, and scheduled dates, and select the winning bid. For safety related purchases of \$10,000 or less, they have the discretion to choose which vendor to use when there is more than one approved vendor on the QSL. If they are not satisfied with the approved vendors, they can initiate the process to add a vendor to the QSL. As in the case of non-safety related purchases, the buyers negotiate the purchase price, quality and delivery requirements with the vendor. Likewise, if the safety related item cost more than \$10,000, the buyers select the three vendors from the approved list who will submit bids. As noted above, the buyers evaluate the bids and select the winning bid. The buyers perform these functions without review from higher level personnel.

In its post hearing brief, Petitioner cites *Bell Aerospace, A Division of Textron, Inc.*, 219 NLRB 384 (1975) for the proposition that buyers who assert discretion in negotiating purchase prices up to a certain figure are not managerial employees. However, in *Bell Aerospace, A Division of Textron, Inc.*, buyers' salary ranges and fringe benefits were comparable to that of other organized employees at the facility. In addition, in that case, one of the buyers testified that their job was "spelled out" for them. However, in the instant case, the Employer considers the buyers' responsibility level, to be, and they are rated the same as some of Employer's first-line supervisors, financial analysts, attorneys, accountants, senior engineers, and human resource personnel. In addition, the buyers' bonus plan is the same as other managers. Furthermore, there is no evidence that their job is simply spelled out for them. Rather, the evidence indicates that

they use discretion in expending substantial amounts of the Employer's credit. Accordingly, I find that the buyers (five senior procurement specialists and Coordinator Bello) are managerial employees. *Concepts & Designs, Inc.*, supra.

B. Coordinator O.C. Britt

As noted above, Britt manages the Employer's Vendor Stock Program. As the manager, he has the discretion to adjust the minimum and maximum inventory levels of the 1400 to 1500 items kept in inventory. Britt makes the adjustments based on his assessment of the material needs of the Employer. When Britt adjusts the minimum and maximum level of inventory items, he controls how much of the Employer's credit will be expended to meet the higher or lower minimum and maximum levels. Britt may spend up to \$12,500 per transaction and \$100,000 per month to maintain the minimum and maximum inventory levels that he establishes. There is no evidence that Britt's discretionary authority to adjust the minimum and maximum inventory levels is reviewed by higher authority. The discretionary authority to expend the Employer's credit in substantial amounts has long been found to be determinative of managerial authority. *Concepts & Designs, Inc.*, supra.

In its post hearing brief, Petitioner asserts that Britt does nothing more than maintain warehouse inventory and simply notify the vendors that items have to be restocked. However, the undisputed testimony is that Britt has the authority to adjust the minimum and maximum inventory levels. In so doing, Britt controls the amount of the Employer's credit that is committed to an inventory item.

Not only does Britt expend the Employer's credit, he acts on behalf of Material Supervisor Osterberger in the MP&C Department every other Friday. Britt is also on the Employer's emergency team. As such, Britt is on-call twelve weeks of the year. If the nuclear power plant is declared an EOF while he is on-call, Britt will serve as the ALA for the EOF. In this capacity, Britt duties will include insuring the EOF is properly staffed and the workers are housed and fed. While in his on-call status, Britt is effectuating management policy of ensuring that the nuclear power plant will be operational when in an emergency status.

Based on the above, I find that the coordinator position currently held by Britt is a managerial position.

C. Coordinator Charlotte Odom

As previously discussed, Odom is the point of contact for other utilities that wish to borrow or buy River Bend's material items. Odom confers with the buyers in determining whether the items may be released. Petitioner asserts that because Odom confers with the buyers that she exercises no discretion regarding whether an item should be sold or the price at which it should be sold. However, the evidence indicates that after consulting with the buyer, Odom determines if the item can be released. Once it is determined that the item can be released, the evidence indicates that Odom determines if the item will be loaned or sold to the other utility company. If it is determined that the item may be released, Odom has the authority to negotiate lending terms, sell the item to the receiving utility for money, or have the receiving utility replace the item in-kind. There is no evidence that Odom's decision to lend or sell an item is reviewed by a higher level of authority. Although Odom is not

performing any purchasing for the Employer, she is, on behalf of the Employer, negotiating the terms to lend or sell the Employer's inventory to other companies.

As in the case of Britt, Odom serves an important role on the management team in the Employer's EOF plan. As the Director of the JIC, Odom will report directly to the Recovery Manager will be responsible for all media releases concerning River Bend and responsible for rumor control. Because Odom uses her discretion in working closely with other managerial employees to effectuate management policies of loaning and selling material items to support other utilities and is responsible for effectuating management policies in the case of an emergency, I find that the coordinator position currently held by Odom is a managerial position. *NLRB v. Yeshiva University*, supra.

ORDER

IT IS HEREBY ORDERED that the petition be, and it hereby is, dismissed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099-14th Street, N.W., Washington, DC 20570. This request must be received by the Board in Washington by February 6, 2006.

In the Regional Office's initial correspondence, the parties were advised that the National Labor Relations Board has expanded the list of permissible documents that may be electronically filed with its offices. If a party wishes to file the above-described document electronically, please refer to the Attachment supplied with the Regional Office's initial correspondence for guidance in doing so. The guidance can also be found under "E-Gov" on the National Labor Relations Board website: www.nlr.gov.

SIGNED at New Orleans, Louisiana this 23rd day of January, 2006.

/s/ Rodney D. Johnson
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